

Defendants have not yet answered in this case. Defendants moved to dismiss the original complaint on June 13, 2011 because, they claim, all of Plaintiffs' causes of action are premised on the enforcement of a state statute that is unconstitutional and therefore void. Summarizing the Defendants' motion to dismiss the original complaint,

the statute for which enforcement is sought ("HB 3393") is void because: (1) HB 3393 violates the No-Funding provision of the Oklahoma Constitution (*Okla. Const.* art. II, §5), (2) HB 3393 violates the constitutional requirement for the legislature to maintain free public schools (*Okla. Const.* art. I, §5 and *Okla. Const.* art. XIII, §1); (3) HB 3393 violates the constitutional prohibition of making a gift of public funds (*Okla. Const.* art. X, §§14 and 15), (4) HB 3393 violates both the Equal Protection Clause of the Fourteenth Amendment and the *Oklahoma Constitution's* prohibition on discriminating between similarly situated persons (*Okla. Const.* art. II, §7), (5) the *Oklahoma Constitution's* No-Funding clause is enforceable and (6) boards of education are not proper parties to his action. On July 14, 2011, the defendants filed a motion to dismiss the plaintiffs' first amended complaint raising the issues outlined above.

A. Defenses to be Abandoned. None.

III. Motions Pending:

<u>Docket No.</u>	<u>Description</u>	<u>Date at Issue</u>
Doc 37	Defendants' Motion to Dismiss Moot due to the filing of the first amended complaint	Response due 8/4
Doc 46	Plaintiffs' Motion to Stay All Proceedings	At Issue as of July 14, 2011
Doc 49	Defendants' Motion to Dismiss First Amended Complaint	Response due 8/4

IV. Stipulations

A. Jurisdiction Admitted: X Yes No (If no, explain.)

B. Venue Appropriate: X Yes No (If no, explain.)

C. Facts: None at this time.

D. Law: Federal and Oklahoma statutory and constitutional law are at issue in this case.

V. Proposed Deadlines:

Parties to be added by: _____

A. Proposed discovery cutoff date (4 months of discovery unless extended by the court for good cause): _____

Plaintiffs: In light of the pending motions to stay proceedings and to dismiss, each of which could result in significant delay to this litigation, Plaintiffs believe that it is imprudent at the moment to set a deadline sooner than 6/1/2012.

Defendants: Defendants desire that the court enter a standard scheduling order for prompt disposition of this case.

B. Fact witness lists to be exchanged by: _____

Plaintiffs: In light of the pending motions to stay proceedings and to dismiss, each of which could result in significant delay to this litigation, Plaintiffs believe that it is imprudent at the moment to set a deadline sooner than 12/31/2012.

Defendants: Defendants desire that the court enter a standard scheduling order for prompt disposition of this case.

C. Fact witness lists to be exchanged by:

Plaintiffs: In light of the pending motions to stay proceedings and to dismiss, each of which could result in significant delay to this litigation, Plaintiffs believe that it is imprudent at the moment to set a deadline sooner than 12/31/2012.

Defendants: Defendants desire that the Court enter a standard scheduling order for prompt disposition of this case.

D. Proposed Date for Expert Reports by Plaintiff and Defendant:

Plaintiffs: In light of the pending motions to stay proceedings and to dismiss, each of which could result in significant delay to this litigation, Plaintiffs believe that it is imprudent at the moment to set a deadline sooner than 12/31/2012.

Defendants: Defendants desire that the court enter a standard scheduling order for prompt disposition of this case.

VI. Fed. R. Civ. P. 26(f) Discovery Plan

A. Should any changes be made to the timing, form or requirements for disclosures under Rule 26(a)? X Yes X No

If yes, please explain:

Plaintiffs: Disclosures should be delayed until after the court rules on the pending motion to stay all proceedings.

Defendants: No.

B. When were or will initial disclosures under Rule (26(a)(1) be made?

Note that pursuant to Rule 26(a)(1), initial disclosures must be made within 14 days after you confer for the purpose of preparing the discovery plan. All parties are under an affirmative duty to (i) comply with the mandatory disclosure requirements, and (ii) notify the Court of any non-disclosure so that the issue can be promptly referred to a Magistrate Judge for resolution. Failure of any party to disclose information, or failure of any party to bring disclosure issues to the Court's attention in a timely manner, may result in sanctions, including prohibiting the use of that information at trial, pursuant to Rule 37(c)(1).

July 18, 2011, unless the pending motion to stay is sustained.

- C. Should discovery be conducted in phases and/or should discovery be limited at this time to particular subject matters or issues?

_____ Yes X No

- D. Should any changes be made in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the Court's local rules?

 X Yes _____ No

Plaintiffs: Plaintiffs anticipate seeking a protective order to protect special needs children from being deposed.

Defendants: No. Defendants oppose a protective order prohibiting the plaintiff minors from being deposed but will agree to a protective order to protect their identity and the non-disclosure of personal information.

- E. Proposed Number of fact and expert depositions:

1. To be allowed for Plaintiff?

Fact: Presently Unknown

Experts: Presently Unknown

2. To be allowed for Defendant?

Fact:

Defendants: 25

Plaintiffs: Plaintiffs object as they find this request excessive but do not know what number is appropriate at this time

Experts: Presently Unknown

F. Is there a need for any other special discovery management orders by the Court? _____ Yes X No

If yes, please explain:

G. The parties are directed to Guidelines for Discovery of Electronically Stored Information on the public website at www.oknd.uscourts.gov for advise on the production of electronic information.

VII. Are Dispositive Motions Anticipated? X Yes _____ No

Plaintiffs and Defendants both anticipate filing motions for summary judgment.

Defendants have already filed separate motions to dismiss both the original Complaint [which is now moot by the filing of the first amended complaint] and the First Amended Complaint.

VIII. Do All Parties Consent to Trial before the Assigned Magistrate Judge?

_____ Yes X No

If yes, please email a proposed Trial Consent to the Clerk via the designated mailbox at CM-ECFIntakeOKND@oknd.uscourts.gov and indicate the month and year in which trial by the Magistrate Judge is Requested. Please do not file proposed documents as an attachment to a document. (Refer to Section XIV of the CM/ECF Administration Guide of Policies and Procedures for further instruction regarding proposed documents).

IX. Is there any matter that should be referred to the assigned Magistrate Judge for final disposition upon partial consent of all the parties pursuant to Local Rule 73.1? _____ Yes X No

X. Settlement Plan

_____ Settlement Conference Requested after: _____
_____ Describe settlement judge expertise required, if any:
_____ Private Mediation Scheduled in (date): _____
_____ Other ADR (Explain)
 X ADR is not appropriate in this case (Explain)

The matters at issue in this case involve constitutionality of legislation and are of public importance and do not lend themselves to ADR.

XI. Has a copy of the Court's ADR booklet been provided to clients as required?

Plaintiffs: X Yes No

Defendants: X Yes No

XII. Does this case warrant special case management? No.

If yes, explain why.

XIII. Do the parties request that the Court hold a scheduling conference?

 X Yes No Plaintiff.

Plaintiffs request that a scheduling conference be set for this case. Defendants do not join in the Plaintiffs' request, but do not oppose it.

If a conference is not requested, or ordered by the Court, the Court will, after receiving this report, issue a scheduling order based on information contained in this report.

XIV. Estimated trial time: 4 weeks

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